

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IES UTILITIES INC.	DOCKET NO. PSA-01-1
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**ORDER OPENING DOCKET AND GIVING NOTICE
PURSUANT TO IOWA CODE SECTION 476.51**

(Issued December 13, 2001)

INTRODUCTION

IES Utilities Inc. (IES) is a rate-regulated public gas utility that owns and operates natural gas pipelines in Iowa and is subject to the jurisdiction of the Utilities Board (Board). All pipelines owned by IES in Iowa are considered intrastate and therefore subject to the Board's inspection and enforcement authority. Under 49 U.S.C.A. § 60105(a)(9), an intrastate gas pipeline is one not subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) and includes some direct sales lines meeting certain criteria. The Board through its staff performs safety inspections of all IES natural gas facilities to determine if they are in compliance with federal and Board safety standards. Staff prepares reports of violations that they discover and provides those reports to IES personnel for corrective action.

Prior to 1999 staff inspection reports detailed a significant number of violations on IES' system. On December 8, 1999, Board staff met with IES management to discuss the overall poor performance of IES in safety code compliance. The results

of the meeting were summarized in a letter to IES dated January 18, 2000. Based upon the safety reports from early 2000, on January 10, 2001, Board staff sent IES a letter indicating that IES compliance seemed to be much improved. However, inspection reports that were completed after the January 10, 2001, letter again indicated the same patterns of noncompliance as had been documented in 1999.

In August 2001, the Board was informed by an official of the Department of Transportation, Office of Pipeline Safety (OPS), that IES' safety record was not complying with federal safety regulations and that the Board should take corrective action to ensure that IES began to meet those requirements. The Board sent a letter on September 21, 2001, to IES in response to the OPS concerns. In addition, the Board has opened this docket because of the number of violations of federal safety regulations and Board rules by IES since 1999, and IES' failure to adopt procedures to ensure safety regulations are followed and to correct those safety violations found by Board staff in inspections. The Board is also by this order providing notice to IES pursuant to Iowa Code § 476.51 that if corrective action is not taken, an action for civil penalties may be initiated by the Board.

Iowa Code §§ 476.1 and 1B give the Board jurisdiction over the safety standards of utilities (which includes cooperative natural gas utilities) and municipal gas utilities. In addition, OPS has issued the Board a certificate pursuant to 49 U.S.C.A. § 60105. Under that certificate, the Board has assumed responsibility for intrastate natural gas pipeline safety inspection and enforcement in Iowa.

Iowa Code § 476.2 authorizes the Board to adopt rules to implement its regulatory authority under chapter 476. The Board has adopted rules that are generally applicable to pipeline safety that are found in 199 IAC 19.5 and 19.8. Each of these rules adopts the natural gas safety standards from the federal regulations, 49 CFR Part 192. Rule 19.5 adopts the federal safety standards for gas systems and also adopts standards for liquefied natural gas facilities. Pursuant to 49 U.S.C.A. § 60104(c), Iowa is empowered to adopt standards that are in addition to or more stringent than the federal standards, but it may not adopt lesser standards. The Board has in rule 19.8 adopted several requirements that are in addition to or more stringent than federal standards for response to gas leak calls, odorization, and turning on gas service.

Additionally, Iowa Code § 476.2(5) requires that a gas utility operating within the state of Iowa maintain within the state administrative, technical and operating personnel necessary to deliver safe and reasonably adequate service as required by Iowa Code § 476.8. The statute states that violations of this section shall be subject to the penalties provided in Iowa Code § 476.51.

Iowa Code § 476.51 states that a public utility which, after written notice by the Board of a specific violation, violates the same provision of chapter 476, the same rule adopted by the Board, or the same provision of an order of the Board, is subject to civil penalties of not less than \$100 or more than \$2,500 per violation. If the utility willfully, that is knowingly and with a specific intent to violate, after written notice by the Board of a specific violation, violates the same provision of chapter 476 or the

same rule or the same provision of a Board order, the civil penalty is not less than \$1,000 nor more than \$10,000 per violation.

VIOLATION RECORD

In the staff safety investigation reports over the last two years, approximately 200 violations by IES have been identified. Many of these have been corrected and cleared. There are still approximately 80 violations that have not been corrected or IES has failed to provide staff with a response to verify that the corrective action has been taken. Of the unresolved violations, many do not rise to the level where formal action would be justified but there are six that stand out as repeat violations or where IES has failed to take corrective action even after notice provided by staff. A review of IES' safety procedures also indicates that there is a pattern of IES' failure to ensure that the proper safety procedures are followed.

I. Leak Surveys

A violation of 49 CFR 192.723 was found in the Belmond district and is documented in an inspection report by Utility Regulation Inspector John Bloome dated July 16, 2001. This section requires that leak surveys be done at specified intervals and records kept of those results. Leak surveys are conducted in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for gas leaks. Detection of the leaks prevents natural gas accidents from occurring that can endanger persons and property. Mr. Bloome indicates that Jeff O'Neal, Utility Regulation Engineer II, in a report from a prior inspection dated March 4, 1999, stated that there were no

records of any leak surveys in this district between August 5, 1993, and February 10, 1997. Subsequent to Mr. O'Neal's report, records were found and from those records Mr. O'Neal still found that some leak surveys did not comply with the regulations. IES stated that it thought the surveys were completed. Don Stursma, Manager of the Board's Safety & Engineering Section, in a letter dated July 27, 1999, told IES that its response was not sufficient and the areas should be surveyed as soon as possible in 1999. He also requested confirmation be sent of the completion of the surveys. Mr. Bloome indicates that during his 2001 inspection he found that the leak surveys had not been performed. IES responded to Mr. Bloome's report by stating that it was contracting for the leak surveys to be completed by December 1, 2001. Mr. Bloome concludes that this is a repeat violation.

The Board finds that IES has violated 199 IAC 19.5(2) in not performing leak surveys and maintaining records of leak surveys in accordance with 49 CFR 192.723.

II. Corrosion Control

In an inspection report on the Iowa Falls District dated July 3, 2001, Mr. Bloome states that Utility Regulation Inspector Reed Helm last inspected the district in June and July of 1999. In his report dated August 16, 1999, Mr. Helm found both cathodic protection zones in Wellsburg were below the required protection levels in 1995, 1996, 1997, and 1998. Mr. Bloome then states that in a follow-up inspection in January 2000, Mr. Helm was told the cathodic protection had been brought up to required protection levels. Mr. Bloome then indicates that during the 2001 inspection he found no record of any corrective action in 1999 and low readings again in 1999

and 2000, with no corrective action yet taken at the time of his inspection in March and April of 2001. IES could not explain why these deficiencies had apparently gone uncorrected for six years. In addition, Mr. Bloome found ten cathodic protection zones in other towns that were deficient in both 1999 and 2000, and no corrective action had yet been taken in six of those zones when the district was inspected in March and April of 2001. The cathodic protection is required by 49 CFR 192.465.

Monitoring of cathodic protection is included in the external corrosion control monitoring standards required by the federal regulations. The level of cathodic protection required by the regulations must be maintained to prevent corrosion of the natural gas pipes that could potentially result in leaks, which could endanger persons and property.

In a response letter dated October 1, 2001, IES contended that corrective action was attempted in Wellsburg in 1999 and 2000, but offered no explanation as to why no evidence of this work was provided to the inspector. IES further stated that both zones in Wellsburg and five of the six other zones have since been corrected and the last one would be repaired by November 15, 2001.

The Board finds that IES has violated 199 IAC 19.5(2) by not complying with the requirements for corrosion control as required by 49 CFR 192.465.

III. Emergency Shutoff Valves

Under 49 CFR 192.181(b), an emergency shutoff valve must be located at a safe distance from a pressure regulating station. IES has facilities that were originally installed as farm taps serving single customers that were found to now

serve multiple customers without the improvements required by the safety regulations. These violations are disturbing because they show a lack of awareness of the federal safety regulations and the failure of IES management to communicate the problem to its employees, once staff had pointed out the deficiencies. In a status report letter dated August 12, 2001, IES reports it has initiated a process to identify such stations, but presents no plan for corrective action for those identified.

IES has also objected that many of these stations have existed since well before 1999, but were not cited prior to 1999. However, the fact that the problem was not identified when the violation occurred does not excuse IES' failure to comply. Staff brought the problem to IES' attention starting in 1999, and it does not appear that IES yet has a plan to take corrective action.

The Board finds that IES has violated 199 IAC 19.5(2) by not complying with the requirements of 49 CFR 192.181(b) concerning emergency shut-off valves.

IV. Response to Leak Calls

A report of a gas leak may indicate a dangerous situation and the Board prescribed more stringent rules for responses to leak calls in 199 IAC 19.8 (4) by making a report of a gas leak an emergency requiring immediate attention. Neither 19.8(4) nor 49 CFR 192.615(a) establish a time limit on responses, but the Board has used a response time of one hour as the standard for immediate attention and has applied that standard in a previous proceeding, Docket No. PSA-89-1. If the response time is longer than one hour, the Board then looks at the reason for the additional time before it determines that a violation has occurred.

Inspections had shown that after problems were found in two inspections in 1999 and early 2000 (12 and 31 instances, respectively, of response times over one hour), IES was improving its performance. However, inspections in 2001 again found response times of over one hour. In the Spirit Lake District, 68 total instances were found and 147 were found in the Creston District. IES has presented no plan for improvement in those two districts and a tracking system implemented after the 1999 inspection citations does not seem to have corrected the situation.

For the Creston District, IES provided a computer printout of response times over one hour for 1999, 2000, and the first part of 2001, in which it listed 145 instances rather than the 147 counted by staff. An unspecified number of the response times were allegedly due to problems with using mobile data terminals. However, the printout shows 69 were due to “drive time,” including a five-hour response, and in six instances the employee assigned had another call to respond to first. No explanation was offered in 31 instances. On an annual basis, there were 73 instances in 1999, 55 in 2000, and 17 in the first five months of 2001. This shows a decline and improving documentation of these problems. However, ten of the 17 in 2001 were due to “drive time” and one was due to the employee having two calls to answer. This record of response times over one hour indicates that IES has a serious problem with how it assigns employees to respond to calls.

Board rule 199 IAC 19.8 makes each leak call “an emergency requiring immediate attention.” The number of instances where response time exceeds one hour, the practice of assigning response personnel with long driving times, and

assigning personnel who may be responding to other leak calls are violations of 199 IAC 19.8.

V. Maximum Allowable Operating Pressure

Under 49 CFR 192.619, 621, and 623, each pipeline must have an established Maximum Allowable Operating Pressure (MAOP), which is essentially a pressure rating for the pipeline or pipeline system. Violations were cited in this area in ten of the 13 inspections conducted in 1999, 2000, and through September of 2001. This included instances of missing or incomplete documentation and outright errors. Also, numerous instances were found where MAOP records did not agree with the pressures listed in regulator station review documents, which call into question the adequacy of pressure control and overpressure protection on the downstream pipelines. Staff has no evidence to date that any substantive remedial action has been initiated.

IES has violated 199 IAC 19.5 by not meeting the requirements for maximum allowable operating pressure established in 49 CFR 192.619, 621, and 623.

VI. Pressure Tests

Numerous violations have been cited for improper pressure testing of newly installed pipelines. Some were for tests which did not comply with the appropriate provision of 49 CFR Part 192 Subpart J, for the type of pipeline involved; others were under 49 CFR 192.13(c) for failure to follow additional or more stringent provisions of IES' own testing procedures. In 1999 IES employees were still adjusting to the newly implemented IES procedures and in 2000 it appeared the problem was resolved. But

in 2001 it was again found that IES was not following its own test procedures. IES appears to have taken corrective action where the test did not meet federal standards, but not necessarily where the test complied with the federal standards but not its own procedures. IES appears to believe that so long as its tests meet the minimum Part 192 requirements (which for example do not specify a test duration in most of the above instances), there is no significant issue. However, 49 CFR 192.13(c) requires that a company comply with the safety procedures it has established.

IES has indicated that it has contacted a construction contractor to correct one of the areas where violations have occurred. Otherwise, it does not appear that any significant corrective action is being taken to correct or prevent test procedural errors. IES' apparent disregard for the pressure testing requirements of its own procedures as required by 49 CFR 199.13(c) is a violation of 199 IAC 19.5.

VII. Pattern of Violation

The Board considers that the specific examples described above and the overall review of the violations found by staff during inspections for the years 1999, 2000, and 2001, shows a pattern on the part of IES of failing to properly supervise its employees to ensure that the proper safety procedures are undertaken and a failure of IES to ensure that records are properly maintained. The specific probable violations described above are repeat violations and show a pattern of ongoing violations. Also, the reports indicate that IES has systematically failed to provide staff with follow-up responses detailing corrective action taken as promised. This pattern

is a violation of 199 IAC 19.5 which requires that IES construct, install, maintain, and operate its gas plant in accordance with good engineering practices to ensure the safety of persons and property.

CORRECTIVE ACTION

IES shall provide to the Board by January 31, 2002, a report that details the corrective action that IES will take to correct all of the specific violations described in this order and the pattern of violations. The corrective action is to be completed on or before July 31, 2002. The report shall establish a timeline for monthly reports to the Board for each month prior to the completion deadline that detail what corrective action was scheduled for the preceding month and what corrective action has been completed. Where corrective action has not been completed as scheduled, IES shall provide an explanation of why the corrective action was not completed and a date by which the corrective action will be completed.

IES shall also provide a report from IES management that describes the steps to be taken by management to ensure that IES is in compliance with federal and Board safety regulations in the future. This report shall be due on July 31, 2002.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Docket No. PSA-01-1 is opened to review compliance with federal and Board pipeline safety regulations by IES Utilities Inc.

2. IES Utilities Inc. shall file a report on or before January 31, 2002, as described in this order, of its plan for corrective action and shall take the corrective action as described in this order and file reports as scheduled in this order. The Board may order modifications to the plan for corrective action.

3. IES Utilities Inc. is hereby given notice pursuant to the provisions of Iowa Code § 476.51 of the violations of Board rules as described in this order and of the requirements for corrective action directed in this order. Failure to comply with its plan for corrective action may result in a civil penalty action.

4. On or before July 31, 2002, IES managers shall file a report with the Board that describes the steps taken by management to ensure that IES is in compliance with federal and Board safety regulations in the future.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 13th day of December, 2001.